

BEFORE THE
ILLINOIS COMMERCE COMMISSION

CENTRAL ILLINOIS LIGHT COMPANY) DOCKET NO.
) 00 -0579
Proposal to eliminate its Electric)
Fuel Adjustment Clause and include)
fuel and poser supply charges in)
base rates.)

Springfield, Illinois
January 29, 2001

Met, pursuant to notice, at 1:00 P.M.

BEFORE:

MR. JOHN ALBERS, Examiner

APPEARANCES:

MR. EDWARD J. GRIFFIN
Defrees & Fiske
200 South Michigan Avenue, Suite 1100
Chicago, Illinois 60604

(Appearing on behalf of Central Illinois
Light Company via teleconference)

MS. JANIS E. VonQUALEN
527 East Capitol Avenue
Springfield, Illinois 627 94

(Appearing on behalf of the Staff of the
Illinois Commerce Commission.)

SULLIVAN REPORTING COMPANY, by
Carla J. Boehl, Reporter
Ln. #084-002710

1 I N D E X

2 WITNESSES DIRECT CROSS REDIRECT RECROSS

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10 I N D E X

11 EXHIBITS MARKED ADMITTED

12 (None)

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1 PROCEEDINGS

2 EXAMINER ALBERS: By the authority vested in
3 me by the Illinois Commerce Commission I now call
4 Docket Number 00-0579. This docket concerns Central
5 Illinois Light Company's proposal to eliminate its
6 Electric Fuel Adjustment Clause.

7 May I have the appearances for the
8 record, please?

9 MR. GRIFFIN: Edward J. Griffin of Defrees
10 and Fiske, Suite 1100, at least the last time I could
11 get there, 200 South Michigan Avenue, Chicago 60604,
12 appearing on behalf of Central Illinois Light Company.

13 MR. FITZHENRY: Edward Fitzhenry of the law
14 firm of Lueders, Robertson and Konzen, Post Office Box
15 735, Granite City, Illinois 62040, appearing on behalf
16 of the Illinois Industrial Energy Consumers.

17 MS. NORRINGTON: Karen Norrington on behalf
18 of the Citizens Utility Board, 208 South LaSalle,
19 Suite 1760, Chicago, Illinois 60604.

20 MS. VON QUALEN: Janis Von Qualen and John
21 Reichart on behalf of the Staff of the Illinois
22 Commerce Commission, 527 East Capitol Avenue,

1 Springfield, Illinois 62701.

2 EXAMINER ALBERS: Thank you. Let the record
3 reflect there are no others wishing to enter an
4 appearance.

5 This status hearing has been called in
6 light of some new information concerning CILCO's coal
7 costs as described in Staff's January 26 motion for an
8 Interim Order. As I recall, the notice concerning the
9 status hearing indicated that parties should be
10 prepared to orally respond to Staff's motion. So with
11 that said, why don't we hear from CILCO first?

12 MR. GRIFFIN: All right, Mr. Examiner, thank
13 you.

14 I must disagree with your
15 characterization of the new information because there
16 is no new information at all that relates to this
17 proceeding. And I find Staff's motion probably
18 described as, taking the word from their own motion,
19 incredible. There is absolutely not the slightest
20 basis for this motion, and it is unlawful. It asks
21 for an unlawful action. And I suppose the easiest way
22 to demonstrate that is just to go through point by

1 point the matters raised by the Staff.

2 First of all, I note they point out that
3 CILCO's motion is still outstanding. They don't
4 suggest or recommend a hearing on that, or that the
5 Commission keep the record open some way in case the
6 prices go higher after this matter is determined.
7 They state that a major issue in the docket concerns
8 the cost of Freeman coal. I don't agree that that is
9 a major issue. We show the Freeman billings, their
10 calculations, and the Staff has done nothing other than
11 to make some supposition as to what could or could not
12 be.

13 I notice that in the Staff's own motion
14 that they attach the material from the filings made by
15 another firm, attorney, on behalf of CILCO in their
16 arbitration proceedings and where the cost of coal,
17 the actual cost of coal -- and I think that this is
18 exactly what we said in our testimony in the case --
19 through the third quarter of 2000, before adding the
20 profit factor the return on investment was
21 thirty-three fifty-two. And if you add a return
22 investment you are back up to the \$40 plus tax. So

1 this again indicates support for the position CILCO
2 has taken in this case with respect to the cost of
3 coal for Freeman.

4 Now, let's go to the next question, the
5 next point that Staff makes on page 2 of the Interim
6 Order. They say that the proposed cancellation of the
7 contract would have a significant effect on the
8 Company's cost of coal.

9 The proposed cancellation is just what it
10 is. It is proposed. If we check the testimony, you
11 will note that we provided information that in the
12 last arbitration proceeding with respect to Freeman,
13 CILCO asked that the contract be terminated because of
14 breaches. And the panel said it will not be
15 terminated although it may allow a recovery of damages
16 in the form of refunds for past payments that were
17 over charges.

18 The panel of arbitrators did not allow
19 the cancellation of the contract. The effect on the
20 Company's cost of coal, who knows what that's going to
21 be. I will get into that a little more in a little
22 while.

1 But right now they are saying that CILCO
2 in its arbitration will save roughly \$23 million
3 annually. Certainly, they are adopting CILCO's
4 statement that the cost of coal is \$43 and they say
5 it's going to be down to \$20. Well, the question is
6 what will it be.

7 Later on on page 3 Staff says the
8 Commission must have the opportunity to take into
9 consideration the resolution of CILCO's Notice of
10 Termination before entering a final order. Now, how
11 many years is that going to take? I want to point out
12 on the record that the last arbitration that was
13 decided in August of 2000 was filed in the fall of
14 1997. So it was three years, almost four, before the
15 panel of arbitrators reached the decision. And that
16 case is not yet final; it is still pending in the
17 courts. So heaven knows how long the current
18 arbitration will take.

19 Now, Staff has said that "It is CILCO's
20 intent" -- and I must take serious umbrage at this
21 comment; it is unfair, it is unreasonable, it is
22 totally untrue -- "It is CILCO's intent that the

1 ratepayers will receive none of the benefit of the
2 refund of \$30 million," if we get it, "under the
3 current arbitration before the Triple A." CILCO
4 submitted its testimony on this earlier in response to
5 a comment made by IIEC witness Dauphinais in which we
6 clearly and unequivocally pointed out that any refunds
7 related to periods before the elimination of the FAC
8 would go to the customers. And how the Staff could
9 make this comment, this assertion, calculated only to
10 create hysteria, it's just not fair, it's not correct.

11 "Since CILCO never revealed its
12 activities during the course of this proceeding," what
13 were we supposed to say? That the cost of coal is
14 going to go down or is it going to go up. We have no
15 idea what is going to happen as a result of anything
16 that is pending now and we won't know for years. And
17 the Commission cannot under the holdings of the
18 Illinois Supreme Court in the Slattery versus Peoples
19 Gas case, and as the Commission itself has pointed out
20 and we cited in our testimony in this case, the
21 Commission cannot and must not assume that CILCO is
22 going to be successful in some proceeding that may or

1 may not be pending now.

2 So there is absolutely no way, wholly
3 apart from what the statute says about elimination of
4 the FAC, that the Commission can take into account in
5 this proceeding the resolution of CILCO's Notice of
6 Termination. It is just not possible because we don't
7 know what's going to happen. We think we should win.
8 And we expect to win. But we don't have any way of
9 saying absolutely that's going to happen, and neither
10 can the Commission.

11 I would note that the Staff said that
12 Section 9-220(b) requires the Commission approve or
13 approve as modified the proposed tariff sheets within
14 240 days. That is a dead end time limit. The
15 Commission cannot under the statute do anything but
16 determine the proper amount to be included in base
17 rate at the end of the 240-day period. It cannot say
18 this is what we determined, but we will change it next
19 week.

20 For example, to put this in context , if
21 the Commission adopts what we are doing now, what we
22 have proposed in this case using the forward prices on

1 the Synergy index, and it turns out that those prices
2 are too high or too low, let's say too low, would the
3 Commission be legally authorized to come in and raise
4 those and give CILCO more money and change its base
5 rate after this period, after the elimination is over?
6 I think not. Nobody would support that. And,
7 certainly, we would oppose trying to reduce it, any
8 more than the Commission could reduce the rates of any
9 other utility that has eliminated its FAC pursuant to
10 the provisions of 9-220. The Commission has no
11 authority to do it. It is mandatory.

12 There has been a response by IIEC that if
13 the Commission has a problem with the proposal that we
14 have an interim order which, of course, would be
15 totally unlawful and unreasonable, that the Commission
16 deny the petition to dismiss it. Again, the
17 Commission cannot dismiss it. It is mandatory that
18 they make the decision. They have to do it. That's
19 why the 240 days is in there.

20 Now, I also note that in this proceeding
21 -- and if I sound irritated, I think it's a fair
22 statement that that's a good description of me. They

1 talk about these, what brought this to the
2 Commission's attention, was the newspaper story.
3 Well, I have been reading some of those newspaper
4 stories also and I see the comments by the
5 Commission's spokesperson. I don't know whether that
6 spokesperson is speaking for the Staff or for the
7 Commissioners or for somebody else. But I think it's
8 unfair and unreasonable and harmful to the judicial
9 process to have comments in there about what CILCO
10 must or must not do or what the Commission is going to
11 do, giving interpretation of what the law requires and
12 does not require and what the facts require. And that
13 was unfair and it should not happen. But it's
14 happened more than once in this week, this last week.
15 And it's very prejudicial to CILCO to have that kind
16 of thing in the newspapers.

17 I think I have covered just about
18 everything I could think of. What Staff is proposing
19 is unfair and unreasonable, and it's totally contrary
20 to the statute, and it cannot be done. There cannot
21 be an interim order and the Commission cannot assume
22 that CILCO is going to be successful in getting its

1 coal prices reduced. I will stop with that.

2 EXAMINER ALBERS: One question, Mr. Griffin,
3 what was the name of that case that you cited?

4 MR. GRIFFIN: It's cited in -- it's in our --
5 and I am at somewhat of a disadvantage, Mr. Examiner.
6 I would have had this at my fingertips had I been in
7 my office this morning. But it was the case, the
8 CILCO case, it was -- I believe it was a 1981 rate
9 case decided in 1982 where the case was cited. The
10 name of the case was Slattery versus Peoples Gas, and
11 that is cited in the Commission Order and we cited the
12 Commission Order in our testimony in this case. And I
13 can get that for you certainly by tomorrow, assuming I
14 can get back into my office tomorrow.

15 EXAMINER ALBERS: When you are talking about
16 the rate case, are you talking about the gas? Is it
17 an electric or gas rate case?

18 MR. GRIFFIN: It was a combination. It was
19 both, as I recall. It was gas and electric.

20 EXAMINER ALBERS: And it was your most recent
21 one?

22 MR. GRIFFIN: It was our most recent electric

1 case, our last electric case which was decided I
2 believe in 1982. And it is cited in our briefs.

3 In that case the Company was engaged in
4 litigation about the taxes, the real estate taxes, on
5 its Duck Creek plant. The law had been changed to
6 eliminate the personal property tax as part of the
7 plant had been classified for tax purposes as personal
8 property. The taxing authority of the county in which
9 Duck Creek is located reclassified the personal
10 property or a good part of it as real estate so they
11 could re-impose the tax that they had previously
12 collected. That was in litigation.

13 It was proposed that the effects of that
14 litigation, beneficial effects assuming that CILCO won
15 it, be included in the calculation of the required
16 rate of return that was required to operate the plant.
17 The Commission correctly cited in the Slatter case
18 that we cannot assume that CILCO will be successful in
19 that case and did not include any of the potential
20 consequences. That case is still the law. It has not
21 changed. And it prevents the Commission from assuming
22 success at any external proceeding.

1 EXAMINER ALBERS: Okay. Thank you. And,
2 Ms. Norrington, does CUB have a response to Staff's
3 motion?

4 MS. NORRINGTON: Yes. Actually, we have a
5 response about Staff's motion and the IIEC's motion.

6 EXAMINER ALBERS: Very well.

7 MS. NORRINGTON: If you would like me to take
8 IIEC first, that's fine, unless you want me to
9 speak --

10 EXAMINER ALBERS: Why don't we take up
11 Staff's motion first?

12 MS. NORRINGTON: Okay. With respect to
13 Staff's motion, let me just say preliminarily that CUB
14 definitely agrees with the effects for consumers of
15 the elimination of the Fuel Adjustment Clause in that
16 it gives consumers a set base rate. However, what is
17 of the utmost importance is that the base rate
18 incorporate component costs that are reasonable and
19 necessary and should be borne by consumers. Based on
20 the information that came to light last week, we have
21 great concerns about the Freeman coal issue and the
22 dispute between CILCO and that company.

1 With respect to an Interim Order, we also
2 have great concern that it might be inconsistent with
3 the statutory mandate that a decision be made within
4 240 days. We think it is very important that we hear
5 evidence with respect to the appropriate cost for the
6 coal. We also would support the adoption of Staff
7 witness Larson's testimony with respect to the
8 appropriate cost, and I believe that in the motion
9 that he talks about a \$19 per ton cost at this point
10 as well as the average market price being around \$20
11 which is significantly lower than the \$43 per ton
12 proposed by CILCO.

13 We also at this point are prepared to ask
14 for sanctions against CILCO based upon the fact that
15 CILCO was aware during, not only the discovery phase
16 of this case, but also during the hearing that it
17 intended to provide Freeman with notice that it was
18 going to cancel the contract or that it had in fact
19 already given notice to the company. And based on
20 that, regardless of what Mr. Griffin has said that
21 those documents were filed by another law firm, the
22 fact of the matter is that it was CILCO who brought

1 this case in the first place. It was CILCO who
2 provided witnesses. It was CILCO who provided
3 testimony. And CILCO should in fact be sanctioned for
4 enucleating this Commission.

5 EXAMINER ALBERS: Any sanctions referred to,
6 are you going to address that in a separate filing?

7 MS. NORRINGTON: Certainly, Mr. Examiner. We
8 were going to ask you how you would prefer to see that
9 handled, but we would -- based on your question we
10 will go ahead and file that separately.

11 EXAMINER ALBERS: Okay, thank you.

12 MS. NORRINGTON: Let me also state that
13 Mr. Griffin was saying earlier, you know, what was
14 CILCO supposed to say to the Commission or to the
15 other parties in this case during the pendency of this
16 proposal. Well, what they should have said was we
17 intend to notify Freeman that we are going to cancel
18 this contract. What they should have done was divulge
19 the information.

20 I'm sure you can imagine the absolute
21 just fright that we experienced last week when we read
22 a newspaper telling us about this. We never heard

1 that from the Company themselves. And CILCO was
2 quoted in the paper, just as the ICC was, that CILCO
3 did nothing to deny that they in fact had filed this
4 notice. And then we have got the responses to the
5 data requests which support the fact that they knew
6 well in advance of last week, well in advance of the
7 hearing, that this was their intention. And it was --
8 it was incumbent upon them to be forthcoming with the
9 Commission and with all parties in this case.

10 EXAMINER ALBERS: Let me back up for a
11 minute. These sanctions that you refer to, do you
12 have any idea when you are going to get that pleading
13 in, that filing in?

14 MS. NORRINGTON: Honestly, I don't. I can
15 tell you no later than the end of this week. I am
16 scheduled to be in Springfield the rest of this week
17 beginning tomorrow. But that I would be working on.

18 EXAMINER ALBERS: Also, please cite anything
19 in the statute that gives the Commission authority to
20 impose sanctions in this kind of situation.

21 MS. NORRINGTON: Certainly.

22 EXAMINER ALBERS: Did you have any other

1 response to Staff's motion?

2 MS. NORRINGTON: With respect to Staff's
3 motion, no. We would definitely support it in the
4 alternative, but we also found aspects of the IIEC
5 motion that we felt might be more in order.

6 EXAMINER ALBERS: You are referring to the
7 IIEC response?

8 MS. NORRINGTON: Yes.

9 EXAMINER ALBERS: Then did you have a reply
10 to IIEC's response?

11 MS. NORRINGTON: Yes. Would you like that
12 now or are you going to wait for them to give you a
13 response to Staff's motion.

14 EXAMINER ALBERS: Go ahead and give me your
15 reply to the response now, please.

16 MS. NORRINGTON: Sure. With respect to the
17 motion filed by the IIEC, we also agree that it is
18 fully within the Commission's authority at this point,
19 based upon the evidence that is in the record as well
20 as the filing, that the Commission would certainly
21 have every right to dismiss the CIILCO petition. And
22 if that were the Commission's finding, we would not

1 oppose that in any way.

2 As the IIEC set forth in its motion, the
3 Section 9-220(d) does provide that the Commission can
4 make a decision based upon the record or the actual
5 filing. And in this case neither one of those
6 addresses the issue with respect to the cost of coal
7 from Freeman. And, again, we just feel that the
8 record is woefully insufficient with respect to what
9 the appropriate cost would be, other than the
10 testimony provided by Staff witness Larson.

11 In the event that the Commission was
12 reluctant to adopt Staff witness Larson's treatment,
13 proposed figures, we would support the IIEC suggestion
14 that the Commission dismiss the proposal in its
15 entirety, and let CILCO resolve its issues with
16 respect to its coal cost, and then refile at a point
17 in time when they can provide the Commission, as well
18 as the parties, with full, reasonable information upon
19 which to make a set of base rates.

20 EXAMINER ALBERS: Okay. And I received in
21 writing IIEC's response through e-mail prior to this
22 hearing. Mr. Fitzhenry, do you have a reply to either

1 of the earlier responses you just heard.

2 MR. FITZHENRY: Just a couple of follow-up
3 comments, Mr. Albers. As a preliminary matter, during
4 Mr. Griffin's opening remarks he made reference to the
5 dollar savings referred to in the Staff motion. I
6 believe those dollar savings were intended to be in a
7 confidential way and I don't know if you intend to
8 mark that portion of the record in camera or some
9 other way. If I am wrong in my understanding, then
10 that's fine. But at least my version of the Staff
11 motion show that those dollar amounts were intended to
12 be held in confidence.

13 EXAMINER ALBERS: If memory serves me, I
14 think most, if not all, of those dollars amounts were
15 from newspaper articles attached to Staff's motion
16 and, therefore, it would be too late.

17 MR. FITZHENRY: Okay. Let me just sort of
18 respond to how we thought our response was appropriate
19 to the Staff motion. When I received word that there
20 was information out there about the coal contract and
21 then had the Staff motion, my first way of thinking
22 about this was is this information that I would have

1 thought is material and relevant during the course of
2 the hearings. I came to the quick conclusion that
3 that was the case.

4 And in a lot of what Mr. Griffin had to
5 say, you know, went to how this evidence could be
6 viewed, what its impact would be, for example, the
7 number of years it took them to arbitrate the last
8 contract dispute with Freeman and how that would bear
9 upon this issue, a lot of those sorts of statements,
10 in my judgment anyway, are of an evidentiary nature.
11 And in my opinion I believe that we have been
12 prejudiced in not being able to have that information
13 as part of the record.

14 Certainly, I understand CILCO has some
15 legal argument as to what that information would have
16 been appropriate in determining the adjustment to the
17 base fuel cost in base rates. But as a preliminary
18 matter I think it's evidence that should have been
19 made part of this record, and it wasn't.

20 We pointed out in our response the
21 several references in the record where CILCO has said
22 that they were going to buy coal under this contract

1 from this particular mine for a various length of
2 time. And we were all led to believe that that's what
3 CILCO intended. Now we are led to believe something
4 different, even as early as October of last year, that
5 CILCO was looking to do something different, vis -a-vis
6 this contract. So again to cut this short, I hope, we
7 understand where Staff is coming from in terms of the
8 right and entitlement to this evidence, and we
9 certainly agree with that.

10 As to sort of the legal argument that has
11 been addressed somewhat, we have a concern as well
12 that the statute could be read to mean that you must
13 have a final order within 240 days. And I don't know
14 if that means an interim order or something different.
15 And I would not want my clients to be prejudiced by an
16 interim order having been entered and then having an
17 appellate court decide, oh, by the way that's a final
18 order, and then we are stuck with these rates for the
19 next four or five years, whatever it might be.

20 So again, in my way of thinking, it came
21 back to this. Is this a solid enough piece of
22 information to make the decision. And I would think

1 not, given the, if you will, CILCO's supplemental to
2 Number 9. I know we briefed that to death. And now
3 with this new revelation about the Freeman coal
4 contract, I believe the Commission can look at Section
5 9-220(d) and say, given what's happened at this point
6 in time and the prejudice to Staff and Intervenors,
7 and the fact there is not enough time to pursue full
8 and robust evidentiary hearings on this matter, and
9 because the record is otherwise inadequate, I think
10 the Commission could be justified in dismissing the
11 petition. And so I will leave it at that.

12 EXAMINER ALBERS: Okay. Mr. Griffin, any
13 reply to those responses?

14

15 MR. GRIFFIN: Yeah. Does Staff have anything
16 to say?

17 EXAMINER ALBERS: Well, it's their motion;
18 they get the last call.

19 MR. GRIFFIN: Okay. Yes, I do have a reply.
20 There is not the slightest basis for what
21 Ms. Norrington is saying that there should be
22 sanctions for misleading ICC. We didn't mislead

1 anyone. We filed notices just the way we filed at the
2 arbitration proceeding in 1997, proposing that this
3 should be cancelled, the contract should be terminated
4 because of breaches. We made the same proposals to
5 Freeman. We did not know how they were going to
6 respond to these notices, which are permitted under
7 the contract. It was Freeman that came out with these
8 determinations that we are going to shut down the
9 mine, when what they should be doing is complying with
10 the terms of the contract, the requirements of the
11 contract.

12 EXAMINER ALBERS: Mr. Griffin, I don't want
13 to argue what the appropriate action for Freeman
14 should be.

15 MR. GRIFFIN: Well, I am responding,
16 Mr. Examiner, to what these people say our actions
17 should have been. They said we should have been
18 telling the Commission that this was going to happen,
19 and we didn't know what was going to happen. We had
20 no idea that Freeman was going to propose this.

21 Now, what are we supposed to tell the
22 Commission and what is this idea of sanctions? I am

1 aware of nothing that we did wrong or improper, and
2 certainly we didn't mislead anybody. We told
3 everything that had happened up until the day that we
4 filed this and then some. We told them that we were
5 trying to get this thing terminated in our last
6 arbitration proceeding and we got turned down. That
7 is still an open issue whether it could happen in the
8 future.

9 So our position is, no, you can't change
10 the facts. You can't assume we are going to be
11 successful. And the whole idea that we were
12 deliberately misleading or hiding any facts is totally
13 untrue and uncalled for. End of my comment,
14 Mr. Examiner.

15 EXAMINER ALBERS: Okay. And Staff.

16 MS. VON QUALEN: Thank you. Staff cannot
17 disagree with some of the comments that the various
18 parties have made.

19 MS. NORRINGTON: Jan, can you speak up a
20 little bit? We can't hear you very well.

21 MS. VON QUALEN: Okay. I will see. Staff
22 does not disagree with some of the comments that the

1 parties have made regarding the awkwardness of the
2 motion for interim order. However, I don't believe
3 that an interim order is barred by the language of
4 9-220. 9-220(d) requires that an order be entered
5 within 240 days and that the Company should be given
6 seven days to either accept or reject the order.

7 Implicit in Section 220(d) is the
8 understanding that the Company will provide a full,
9 complete, thorough and correct information in the
10 filing and at the hearing. In this situation it was
11 CILCO who made the determination of when to file for
12 the UFAC elimination. CILCO determined what witnesses
13 would testify and what they would testify about.
14 CILCO also made the determination of when to send the
15 letter to Freeman regarding cancellation of the
16 contract, and when to file the complaint in
17 arbitration regarding the contract. At this point, up
18 until last week, Staff was not aware, nor were any of
19 the other parties, that CILCO had taken these actions.

20 Mr. Griffin has stated that at this point
21 there is nothing to say that the contract actually
22 will be cancelled. That is correct. However, Staff

1 nor any of the parties were given the opportunity to
2 do discovery or cross examination on any of the facts
3 regarding the proposed cancellation of the Freeman
4 contract.

5 Given that that was a major issue, and I
6 believe it was a major issue, in determining what the
7 proposed tariff should be, Staff and the parties
8 should have been given an opportunity to pursue that.
9 At this point in the proceeding, the Commission has
10 240 days to enter an order. We know from what we have
11 read in newspaper articles that CILCO has proposed
12 cancelling the contract effective shortly after or
13 shortly before the date that an order must be entered
14 in this docket. There simply is not enough
15 information before the Commission, nor can there be,
16 before the 240-day time limit is over in order for
17 staff to give an opinion about what the result of
18 CILCO's latest actions were. Again, CILCO had this
19 information all along and it appears to me that their
20 failure to provide it was being less than forthright.

21 If the Commission were to enter an order
22 at this point, they do have enough information in the

1 record to make a reasonable determination of what the
2 prices would be. However, they would have to leave it
3 open to determine what would be the final result of
4 CILCO's most recent action. I don't believe that
5 CILCO would be prejudiced by an interim order, and I
6 think it is within the realms of what the Commission
7 has the authority to do.

8 Staff does not object to IIEC's motion to
9 dismiss. Staff is not prepared to respond to it at
10 length but would be happy to brief the issue.

11 EXAMINER ALBERS: Is that the extent of
12 Staff's response or, I'm sorry, reply?

13 MS. VON QUALEN: Yes.

14 EXAMINER ALBERS: My first thought is I don't
15 believe in my reading of IIEC's response they actually
16 moved to dismiss anything. Is that correct,
17 Mr. Fitzhenry?

18 MR. FITZHENRY: It's actually posed as an
19 alternative to the interim relief order being
20 requested by the Staff.

21 EXAMINER ALBERS: Okay.

22 MR. FITZHENRY: That would be found in

1 paragraph 3 of the filing.

2 EXAMINER ALBERS: Does that mean you are
3 actually moving at this time that that be done.

4 MR. FITZHENRY: It's in the alternative, yes.
5 It is for reasons, as I said, if the Commission does
6 not for whatever reason believe it's appropriate to
7 enter an interim order, we move that they dismiss the
8 petition on the basis set forth in our filing.

9 EXAMINER ALBERS: I wasn't clear on that
10 then. So you are moving to dismiss.

11 MR. FITZHENRY: Yes, in the alternative.

12 EXAMINER ALBERS: In the alternative, okay.

13 MR. GRIFFIN: You get a lot of good cases,
14 Mr. Albers.

15 EXAMINER ALBERS: Again, I think given the
16 arguments I am going to not rule on Staff's motion
17 today. I will withhold judgment on that for a while.

18 In the meantime, however, given that we
19 are under a deadline in this case and in the event
20 that I decide that the relief Staff is moving for
21 cannot be done, I believe the information presented in
22 Staff's motion provides sufficient justification for

1 accepting additional evidence on CILCO's Crown II coal
2 costs and hearing cross examination on that evidence.

3 Obviously, the turnaround time for
4 testimony filing dates will be very quick. But
5 because the issue to be addressed in that testimony
6 should be very narrow, I hope that the problems caused
7 by the quick turnaround times are not insurmountable.

8 I have given some thought to the issues
9 that the testimony should address, and before going
10 into the schedule for that or asking for suggestions
11 for a schedule to begin with, I would just like to
12 note that I think CILCO's testimony should address (1)
13 the coal cost that the Company would incur if coal is
14 not purchased under the disputed contract with
15 Freeman, and (2) what impact the, for lack of a better
16 word, new coal costs would have on CILCO's base rates
17 for the forward 12-month periods.

18 And in calculating the base rates for
19 those four 12-month periods, I would like the Company
20 to have basically two sets of calculations, one set
21 reflecting the impact on base rates with the quarterly
22 adjustment included and one set reflecting the base

1 rates without the quarterly adjustment. And I will
2 refer the parties to CILCO Exhibit 7.1 as the source
3 of that quarterly adjustment I am referring to.

4 Does anyone have any questions about it?

5 MR. GRIFFIN: I am not sure I understand how
6 you mean to include the effects, one with and one
7 without the quarterly adjustment. Are you referring
8 to the most recent quarterly adjustment that make up
9 the record?

10 EXAMINER ALBERS: I am referring to the CILCO
11 Exhibit 7.1. In that exhibit one of the issues of
12 dispute from the prior hearing and briefs was the
13 quarterly adjustment. I believe Staff and maybe some
14 of the Intervenors do not believe that quarterly
15 adjustment, as it is labeled in that exhibit, actually
16 reflect CILCO's coal costs. And just perhaps to save
17 me some trouble later, I would like to have two sets
18 of numbers, one reflecting that quarterly adjustment
19 and a second set reflecting the base rates without
20 that quarterly adjustment. Does that make sense?

21 MR. GRIFFIN: I am not -- I am a little
22 confused, Mr. Examiner. Forgive my thickheadedness on

1 this one. I am still not sure what quarterly -- I
2 know what you mean by the exhibit, 7.1. That's the
3 exhibit in which the mine shows its cost through the
4 end of September and then the forecast through the end
5 of the year. And there was in that, I think they had
6 a four or three dollars charge across the board for
7 trying to keep them level for the year. I am not sure
8 how we would make that out when in a sense you are
9 using a corporated and not corporated quarterly
10 adjustment.

11 EXAMINER ALBERS: Well, do you have CILCO's
12 Surrebuttal Exhibit 7.1 in front of you?

13 MR. GRIFFIN: I don't have it in front of me
14 but I remember it very well.

15 EXAMINER ALBERS: In each of the four columns
16 under CILCO price per ton, each of the four columns
17 had an input that's labeled Quarterly Adjustment.

18 MR. GRIFFIN: Okay. I see what you are
19 referring to. I don't see it, but I know what you are
20 referring to there.

21 EXAMINER ALBERS: And it's my understanding
22 that Staff does not believe that quarterly adjustment

1 actually reflects CILCO's price per ton. And I
2 believe Staff may have even referred to it as a fudge
3 factor.

4 MR. GRIFFIN: I believe that's correct.

5 EXAMINER ALBERS: And not having decided the
6 issue, I would like to see calculations reflecting the
7 quarterly adjustment as it is CILCO's position that it
8 should be in there, but also a set of calculations
9 reflecting the price per ton without the quarterly
10 adjustment. Does that make sense now?

11 MR. GRIFFIN: Yes, I understand that to mean
12 that we will simply take their production costs
13 divided by the number of ton, without any quarterly
14 adjustments or other adjustments of any kind.

15 EXAMINER ALBERS: I think we are on the same
16 page. All I am worried about right now are the
17 quarterly adjustments. I haven't given any thought to
18 any other adjustments at this time. Does that make
19 sense?

20 MR. GRIFFIN: All right. And that's, what,
21 through the end of the third quarter or do you want us
22 to include the fourth quarter, the projections that

1 they will make?

2 EXAMINER ALBERS: I think all four, to the
3 end of the fourth quarter.

4 MR. GRIFFIN: Okay. In this testimony how
5 are we to treat the cost of purchase power and the
6 inclusion of 99-0468?

7 EXAMINER ALBERS: I believe you should treat
8 that the same way you did your case in chief at this
9 point. Are you referring to your motion for the --

10 MR. GRIFFIN: Supplemental proposal, correct.

11 EXAMINER ALBERS: 9.0?

12 MR. GRIFFIN: Correct.

13 EXAMINER ALBERS: All right. I am going to
14 get to that. Perhaps now is as good a time as any.

15 First of all, it's my judgment that
16 CILCO's January 8, 2001, motion to file CILCO's
17 Supplemental Exhibit 9.0 should be denied. Therefore,
18 in the absence of that second proposal by CILCO, the
19 position as was set forth by its witnesses and
20 discussed under cross examination of those witnesses
21 will be considered CILCO's standing or pending
22 position. Therefore, when I say your purchase power

1 costs should be treated as they were in your case in
2 chief, I meant don't follow the position that you were
3 advocating through Supplemental Exhibit 9.0.

4 MR. GRIFFIN: What about 99-0468?

5 EXAMINER ALBERS: I guess I don't follow you.

6 MR. GRIFFIN: Well, there were two factors
7 incorporated in the supplemental exhibit. One is the
8 impact of 99-0468 and the other is the updated --

9 EXAMINER ALBERS: That's okay. I got ya.
10 Okay. Go ahead and use -- not knowing how exactly
11 Supplemental Exhibit 9.0 distinguishes between the
12 results of 99-0468 and the forward prices, I'm sorry,
13 futures prices you advocated in relation to your gas
14 PGA elimination case, go ahead and use the purchased
15 power costs as they were reflected -- I'm not sure how
16 I want to rephrase this.

17 MR. GRIFFIN: In the supplemental exhibit.

18 EXAMINER ALBERS: Right, but not reflecting
19 anything stemming from your arguments related to your
20 gas PGA elimination case.

21 MR. GRIFFIN: Understood.

22 EXAMINER ALBERS: Now, backing up for a

1 moment with regard to the testimony to be presented
2 concerning that coal cost, I would at the hearing,
3 this abbreviated hearing, ask that you have someone
4 available who can respond to questions concerning
5 CILCO Exhibit 7.1.

6 MR. GRIFFIN: We will do that. That was
7 prepared by Mr. Livingstone and he would be available.

8 EXAMINER ALBERS: I believe wasn't it
9 Mr. Davidson that sponsored that at the hearing?

10 MR. GRIFFIN: Oh, I'm sorry. 7.1 was not
11 prepared by us. I am thinking 9.0 7.1 was prepared
12 by them and, yes, I believe Mr. Davidson sponsored
13 that, yes, you are correct.

14 EXAMINER ALBERS: Now, at this time why don't
15 we go off the record and I will hear any suggestions
16 for a proposed schedule for the deadline or with
17 regard to rebuttal testimony and the hearing. And we
18 will do this very quickly, though, because I have
19 another hearing at two o'clock. So we are off the
20 record.

21 (Whereupon there was then had
22 an off-the-record

1 discussion.)

2 EXAMINER ALBERS: Back on the record.

3 The schedule for the testimony and the
4 hearing will be as follows, although first we note
5 that any data requests should be responded to promptly
6 and I would rely upon the parties to act in good faith
7 and to respond to DRs as soon as possible.

8 And with that said, CILCO's direct
9 testimony addressing the issues identified earlier
10 should be received by February 1 at noon.

11 Staff and Intervenor direct testimony
12 should be received by February 5 by the close of
13 business.

14 CILCO's rebuttal testimony should be
15 received by February 6 by 3:00 p.m.

16 The hearing will be held at 9:00 a.m. on
17 February 8.

18 Initial briefs will be received by close
19 of business February 13.

20 And reply briefs should be received by
21 noon February 15.

22 And service by e-mail is acceptable.

1 Does anybody have any questions?

2 MR. FITZHENRY: I have a comment, Mr. Albers.
3 I now have a very legitimate excuse not to buy my wife
4 a gift on Valentine's Day.

5 MS. NORRINGTON: No, you don't.

6 MR. GRIFFIN: May I show my objection to the
7 schedule, Mr. Albers, that I am out of town on the
8 date set for the hearing and I am the attorney who
9 tried this case for CILCO and I won't be available
10 after the 8th. I understand the following Monday is a
11 holiday, but I see no reason why this case couldn't be
12 set for the following Tuesday. And I believe this
13 puts CILCO at a disadvantage requiring another
14 attorney to be present.

15 EXAMINER ALBERS: Well, as I indicated off
16 the record, there is a deadline in this case and it is
17 March 28. Time must be left for the proposed order as
18 well as briefs on exceptions and briefs and replies to
19 exceptions, and time must be left for the Commission
20 to consider this matter.

21 I understand the position that all the
22 parties are in. I do not under normal circumstances

1 suggest this tight time frame, but given the deadline
2 and given that there are many other issues for me to
3 decide and steps that need to be taken for the rest of
4 the process, I, unfortunately, see no other
5 alternatives. And Mr. Seidel has been active in this
6 proceeding, perhaps not as much as you have,
7 Mr. Griffin, but as I indicated, I don't know what
8 else to suggest.

9 Does anybody have any other questions or
10 comments? Okay. I don't think I have anything else.
11 Yes, I do have one other matter.

12 Mr. Fitzhenry, you indicated that your
13 response to Staff's motion does in fact contain a
14 formal motion to dismiss as an alternative approach.

15 MR. FITZHENRY: Yes, sir.

16 EXAMINER ALBERS: I assume the parties will
17 want to respond to that and you will want to reply to
18 those responses. So, very briefly, your motion was
19 filed today. I would suggest that the response to
20 this should be received by this Friday, February 2,
21 and replies by next Wednesday, February 7.

22 Anything else? Hearing nothing, then

1 this matter is continued to February 8 at 9:00 a.m.
2 (Whereupon the hearing in this
3 matter was continued until
4 February 8, 2001, at 9:00
5 a.m. in Springfield,
6 Illinois.)

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1 STATE OF ILLINOIS)
)SS
2 COUNTY OF SANGAMON)
 CASE NO.: 00-0579
3 TITLE: Central Illinois Light Company

4 CERTIFICATE OF REPORTER

5 I, Carla J. Boehl, do hereby certify that I
6 am a court reporter contracted by Sullivan Reporting
7 Company of Chicago, Illinois; that I reported in
8 shorthand the evidence taken and proceedings had on
9 the hearing on the above-entitled case on the 29th day
10 of January, 2001; that the foregoing 41 pages are a
11 true and correct transcript of my shorthand notes so
12 taken as aforesaid and contain all of the proceedings
13 directed by the Commission or other persons authorized
14 by it to conduct the said hearing to be so
15 stenographically reported.

16 Dated at Springfield, Illinois, on this 2nd
17 day of February, A.D., 2001.

18

19

20 Certified Shorthand Reporter

21

22